1988

The Southland Corp v. Gail C. and Lori Potter : Brief of Respondent

Utah Supreme Court

Ralph L Jerman; BL Dart; Attorney for Appellant.

Robert M Felton; Attorney for Respondnets.

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * * * * * *

THE SOUTHLAND CORPORATION, a Texas corporation, Plaintiff/Appellant and Crossclaim Respondent, vs. GAIL C. POTTER and LORI POTTER, his wife, Defendants - Respondents and Cross Appellants.	Case No. 860413

88-0089-CA

* * * * * * * * *

RESPONDENT'S BRIEF

Appeal from the Judgment of the Third Judicial
District Court in and For Salt Lake County
The Honorable James S. Sawaya Presiding

Robert Felton
5 Triad Center, Suite 585
Salt Lake City, Utah 84180

Attorney for Defendants/
Respondents

Ralph L. Jerman
1407 West North Temple
Salt Lake City, Utah 84116

B.L. Dart
310 South Main, Suite 1330
Salt Lake City, Utah 84101

Attorneys for Plaintiff/
Appellants

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * * * * * *

THE SOUTHLAND CORPORATION, a Texas corporation,	)	
Plaintiff/Appellant and Crossclaim Respondent,	)	
vs.	)	Case No. 860413
GAIL C. POTTER and LORI POTTER, his wife,	)	
Defendants - Respondents and Cross Appellants.	)	

* * * * * * * * *

R E S P O N D E N T ' S B R I E F

Appeal from the Judgment of the Third Judicial
District Court in and For Salt Lake County
The Honorable James S. Sawaya Presiding

Robert Felton
5 Triad Center, Suite 585
Salt Lake City, Utah 84180

Attorney for Defendants/
Respondents

Ralph L. Jerman
1407 West North Temple
Salt Lake City, Utah 84116

B.L. Dart
310 South Main, Suite 1330
Salt Lake City, Utah 84101

Attorneys for Plaintiff/
Appellants

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

STATEMENT OF ISSUES ON APPEAL.....1

STATEMENT OF FACTS.....1

SUMMARY OF ARGUMENT.....6

ARGUMENT

POINT I
Gail and Lori Potter Are The Fee Simple Owners Of The Property In Question And Appellant Has No Interest In Nor Access Over It.....6

POINT II
There Is No Implied Easement Across Mr. And Mrs. Potter's Property.....9

POINT III
The Findings Of Fact, Conclusions Of Law And Judgment In This Case Accurately Set Forth The Findings Of The Court.....11

POINT IV
Respondents Shall Be Entitled To An Award Of Damages For the Continuing Trespass By The Appellants.....12

CONCLUSION.....13

TABLE OF AUTHORITIES

CASES CITED

Adamson v. Brockbank,
112 Utah 52, 185 P.2d 264 (1947).....10

Davidson v. Robbins.
30 Utah 338, 517 P.2d 1026 (1973).....8

Gold Oil Land Development Corp. v. Davis.
Utah 611, P.2d 711 (1980).....8

Pitcher v. Lauritzen,
18 Utah 2d 368, 423 P.2d 491 (1967).....9

Rucker v. Dalton,
Utah 598, P.2d 1336 (1979).....12

Savage v. Nielsen,
114 Utah 22, 197 P.2d 117 (1948).....9

Williams v. Oldroyd,
Utah 581, P.2d 561 (1978).....13

STATUTORY AUTHORITY:

Utah Code Annotated (1953) § 10-9-1.....3

Utah Code Annotated (1953) § 10-9-4.....3

Utah Code Annotated (1953, amended) § 57-1-6.....7

Utah Code Annotated (1953, amended) § 57-2-1.....7

Utah Code Annotated (1953, amended) § 25-5-3.....7

Utah Code Annotated (1953, amended) § 57-3-3.....7

MISCELLANEOUS:

Restatement of Property (1944) ¶ 476.....9, 10

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * * * * * *

THE SOUTHLAND CORPORATION, a Texas corporation, Plaintiff/Appellant and Crossclaim Respondent, vs. GAIL C. POTTER and LORI POTTER, his wife, Defendants - Respondents and Cross Appellants.	**RESPONDENT'S BRIEF** Case No. 860413

* * * * * * * * *

STATEMENT OF ISSUES PRESENTED ON APPEAL

Respondents submit that the issues presented on appeal are those three issues set forth in Appellant's Brief, and the additional issue presented on the Cross Appeal as to the entitlement of Respondents to damages.

1. Did the trial court err in refusing to award damages to Gail and Lori Potter for the Appellant's continuing trespass and use of the Respondents' property?

STATEMENT OF FACTS

Respondents, Gail and Lori Potter, purchased 5.92 acres of property in West Jordan to build a shopping center (R. pp 214-215). A portion of that property is a piece approximately 87 feet by 129 feet on the corner of 6200 South and 3655 West in Salt Lake County (R. p 215). Respondents received a Warranty Deed to the property in June, 1984 (Ex. 12) and a policy of title insurance (R. p 218). The property was purchased from a corporation called Big Six, and the Respondents utilized a real

estate agent named Eva Nielsen (R. p 220) in consummating the transaction. The actual closing was handled for the Respondents by their daughter, Jana Fuca (R. p 238).

Next to the property purchased by the Respondents is a 7-Eleven store owned by Southland Corporation. Southland admits in its responsive pleadings that Mr. and Mrs. Potter own the corner property next to the store (R. p 49, ¶ 1; R. pp 126-127).

The lot owned by the Appellant is 102 feet wide by 160 feet long as shown in the Addendum to Appellant's Brief at Page A-2. The long side of their lot lies contiguous to 6200 South affording Appellants 160 feet of access on a Salt Lake County road.

When the Respondents purchased their property in June of 1984, they made inquiry of a title company to search the title (R. p 214) and the real estate agent to inquire if 7-Eleven had any other rights of access (R. p 215).

Specifically, Jana Fuca asked the realtor to check with 7-Eleven, which she did (R. p 239; R. p 222-223). The realtor described the Appellant's response as: "They could not find any record of any entitlement of that property to them." (R. p 239).

Appellants purchased their lot based on a contract between themselves and the prior owner signed July 3, 1975. (Ex. 1). They amended their contract to change the dimensions and description of the lot size by a subsequent written contract dated March 9, 1976 (Ex. 2). They received a Warranty Deed for the property described in Exhibit 2, which contains the metes and bounds description of the lot upon which they built their store.

None of the contracts or the Deed between Appellant and its grantor, make any mention of an easement purchase or grant, rights of ingress and egress, or other rights of access over any property other than that specifically described in the agreements.

Mr. E. L. Pack, who was the zone manager for 7-Eleven for 18 to 20 years, handled this purchase for the Appellants (R. p 159). He also was responsible for between 140 to 150 other acquisitions during his employment (R. p 159). He testified in response to an inquiry of whether 7-Eleven had paid anything for any interest in the disputed corner parcle that:

> "At no time was that ever offered to us for sale or purchase (R. 181).

The Secretary/Treasurer of the Corporation which sold Southland their lot, Mr. Bob Bowles, indicated that it was never the Seller's intent to grant 7-Eleven access across the corner parcel (R. p 207). His company, in fact, had intentions of constructing a service station on this same property (R. p 206).

The Appellant's brief is replete with summaries about the rezoning of this property (Appellant's Brief pp 5-8). All of the reference to Minutes of Planning and Zoning Department were admitted subject to a continuing objection (R. p 188) that the Planning Department was an advisory body under § 10-9-4 U.C.A. (1953, amended) and the zoning power lay only with the City Council pursuant to § 10-9-1 U.C.A. (1953, amended) and that these miscellaneous discussions were otherwise irrelevant to the construction and enforcement of the documents conveying title.

Nevertheless, the Appellants, themselves, presented into evidence Exhibit 7 which is a copy of the City Council of West Jordan's meeting regarding the zoning of the parcel in question. This meeting took place on December 9, 1975 which was after the initial contract between 7-Eleven and Big Six had been signed, but three and one-half months prior to the amendment (Ex. 2).

Exhibit 7 clearly establishes that on December 9, 1975 the entire parcel of property now owned by 7-Eleven and the Potters (6.39 acres) was rezoned CN (commercial) without condition or exception (see attached minutes).

Three months after the City Council meeting, Southland amended the sale contract to change the size of the lot (Ex. 2) and that agreement went on to say, in part: "In all other respects, said purchase agreement is hereby ratified and reaffirmed."

There is also one sentence upon which Appellants rely which is found in Exhibit 3 , [illegible] "We will also want two right-of-ways in from Dixie Drive" (R. p 175). This document was found not to be meaningful by the trial court for the reasons described below.

Exhibit 3 was written on stationary of West Jordan City and dated April 11, 1976. It is not signed by anyone representing the City. It is not acknowledged nor is there any claim that it was ever recorded. The City Planner, who was employed by West Jordan at the time, testified that he did not even know where the original document was located (R. p 194) but it was not in his

files (R. p 194) and he didn't know if it was in the file of West Jordan because he had not seen their file (R. p 195). There is no dispute that whatever that document (Ex. 3) was for, Mr. Potter never saw it (R. p 215).

There are only three documents in evidence demonstrating the conveyance of any interest in real property from Big Six Corporation to either 7-Eleven or the Potters. Exhibit 12 is a Warranty Deed conveying Respondents their 5.92 acres. Exhibit 1 is the original contract whereby 7-Eleven agreed to purchase the lot next to Respondent's property. Exhibit 2 is simply an amendment of that contract changing the size of the piece of property which they wish to purchase.

The Warranty Deed which 7-Eleven received was not admitted into evidence, but it is stipulated and agreed that it describes the property which they contracted to buy pursuant to the March, 1976 amendment (Ex. 2).

During the time from the Potter's purchase of their property in June, 1984 to the trial in April, 1986, the Appellant continually trespassed on Respondent's property. Southland was utilizing the property continually for parking, selling cars and in fact painted lines on the ground (R. p 217). They used the property without permission (R. p 217).

Mr. Potter, the owner of the property, testified the fair rental value for the property was from a low $2,000.00 per month to a high $4,000.00 per month (R. p 216). The trial court declined to award damages for this continuing trespass (R. p 103).

SUMMARY OF ARGUMENTS

Appellant has no interests in the Respondents' property. It never purchased any rights in the property nor has its use been of sufficient duration to become adverse to the record owner. Its claim is too obscure (being without description or duration) to support its claim. It has never purchased the interest alleged nor has any party ever conveyed it to it.

The Appellant admits using the Respondents' land for 22 months without right or permission. Respondents are entitled to reimbursement for the value of that use.

POINT I.

Gail And Lori Potter Are The Fee Simple Owners Of The Property In Question And Appellant Has No Interest In Nor Access Over It

The history of the purchase of the contiguous parcel of property can be summarized concisely. On July 3, 1979, 7-Eleven signed a contract (Ex. 1) to buy a lot from Big Six Corporation. That contract was never recorded (R. p 179) but it contained a legal description of certain property. In March, 1976, the contract was amended to insert a different legal description (Ex. 2). That agreement was never recorded but a Warranty Deed for the property described therein was recorded in approximately April, 1976.

Southland Corporation constructed a convenience store on their property, but they have also been using the adjacent corner parcel which is not described in any of the documents and was not purchased because it wasn't offered for sale (R. p 181).

Mr. and Mrs. Potter purchased the property next to the 7-Eleven store in June, 1984. They investigated both the recorded title and inquired about 7-Eleven's use of the corner. There being no documents, recorded interest, long-term uses or other asserted rights, they completed the purchase of the property and received a Warranty Deed and a Title Policy.

There is no dispute that both Deeds (7-Eleven's and Potter's) set forth the legal description of the property described in their respective sale documents.

There is no recorded and/or written document conveying or reserving any interest in the parcel to Appellant. It is submitted that Appellant is simply attempting to obtain, for free, that which they never purchased.

Section 57-1-6 U.C.A. (1953, amended) states:

> "Every conveyance of real estate, and every instrument in writing setting forth an agreement to convey any real estate or whereby any real estate may be affected, to operate as notice to third persons shall be proved or acknowledged and certified in the manner prescribed by this title and recorded in the office of the county in which such real estate is situated . . ."

Futher, § 57-2-1 U.C.A. (1953, amended) states:

> Every conveyance in writing whereby any real estate is conveyed or may be affected shall be acknowledged or proved and certified in the manner herein provided."

and the Statute of Frauds found at § 25-5-3 U.C.A. (1953) mandates that a contract for the sale of real property be subscribed by the party granting the conveyance.

Also, § 57-3-3 U.C.A. (1953, amended) further protects Respondent:

> "Every conveyance of real estate hereafter made, which shall not be recorded as provided in this Title, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same estate, or any portion thereof, where his own conveyance shall be first duly recorded."

There is simply no document, promise, or contract which gives 7-Eleven the rights they assert over the Respondents' property. In fact, their own agent, Mr. Pack, testified that he knew the property wasn't for sale (R. p 181).

In addition to the lack of any written or oral agreement or contract for the corner property and the complete absence of any conveyance of any interest thereto, there was no consideration. Where there is no consideration given, a document (if there was one) is in and of itself invalid to convey any interest in real property. **Gold Oil Land Development Corporation v. Davis**, Utah, 611 P.2d 711 (1980). If Appellant actually contends that the Exhibit 3 document could convey an interest in real property, it is not a valid contract nor enforceable.

In **Davidson v. Robbins**, 30 Utah 2nd, 338, 517 P.2d 1026 (1973) this Court had an opportunity to review a contract allowing buyers to approve the net acreage description at a future time. The Court held:

> "This writing constituted a mere expression of a purpose to make a contract in the future, for the whole matter was contingent on further negotiations. The trial court erred in its conclusion that the writing constituted a valid, enforceable contract."

If one could, by any stretch of the imagination, see Exhibit 3 as a contract, it is certainly only an expression to make a future contract. Also, Exhibit 3 contains no property description whatsoever nor any terms of sale. It is overly vague

and unenforceable. **Pitcher v. Lauritzen**, 18 Utah 2nd 368, 423 P.2d 491 (1967). The trial court determined this document to be meaningless.

POINT II.
There Is No Implied Easement Across Mr. And Mrs. Potter's Property

It appears that Appellants are attempting to impress upon the property which was purchased by the Potters, an easement which they could not buy nor acquire by useage. They contend that there is an implied easement and cite general language from the Restatement of Property concerning the philosophy behind such easements that are also known as "ways of necessity".

The authority cited by the Appellant in **Savage v. Nielsen**, 114 Utah 22, 197 P.2d 117 (1948) concisely states that the purpose and philosophy behind the "way of necessity" is to prevent people from dividing property into many parcels and selling those parcels without providing reasonable access. In **Savage, supra** the Court recognized that reasonable access or right-of-way must be provided to a party where:

> "The physical location of the other tract is such that it is not reasonably accessible without crossing the tract conveyed away." (at pg. 121)

It is not the case, however, that Appellant purchased or acquired any property rights in the adjoining property in this instance. It is also not the case that they lack access to their property. They abut a county road the entire length of their property and have 160' of public access.

The Appellant's authority does not support a "way of necessity". **Adamson v. Brockbank**, 112 Utah 52, 185 P.2d 264 (1947) is an action in which the Court, at Page 270, specifically stated that it was not a case where innocent parties had been mislead by the public records. This was a suit that determined various rights created between all the parties who knew or should have known that there were rights in existence at the time of sale but which were not reflected by the public records. In that case, an obvious irrigation ditch which had been used to provide water to one of the parcels of properties for over 30 years was destroyed and there was no alternative available. It is simply inapposite to the facts in this action.

Appellant's reliance on the Restatement of Property (¶476 p 2977) deletes crucial factors which are set forth to be considered by the Court in determining the existence of a "way of necessity." Those factors are:

(a) Whether claimant is the conveyor or conveyee

(b) The terms of conveyance

(c) The consideration given

(d) Whether the claim was made against a simultaneous conveyee;

(e) The extent of necessity;

(f) Whether reciprocal benefits result to conveyor and convyee;

(g) The manner in which the land was used prior to its conveyance;

(h) The extent to which the prior use was or might have been known to the parties.

In summary there is simply no basis to conceive of a "way of necessity" across a contiguous property since it is not necessary for access or use of the Appellant's property; did not exist prior to their purchase, there was no consideration given for it; they have never asserted it until now; and, the trial court established that the evidence simply did not support such a contention.

POINT III.
The Findings Of Fact, Conclusions Of Law and Judgment In This Case Accurately Set Forth The Findings Of The Court

Respondent is confused as to what deficiency Appellant contends exists in the Findings of Fact, especially in light of the fact that no objection was ever raised at the trial court level as to any supposed inadequacy, nor was any request made to amend or supplement those Findings.

The Appellant's Amended Complaint sets forth their entire causes of action as to any property interests in Mr. Potter's land in Paragraph 4 (R. p 39). The rest of the Amended Complaint is addressed to the legal description of the property and the Appellant's need for a Restraining Order or Injunction. That paragraph states:

> "Plaintiff has and claims an easement and right of ingress and egress over and across the property owned by Defendants Potters for its customers and other invitees. Said easement and right of ingress and egress arise both by express agreement with the predecessor in interest of Defendants Potters and by implication. It has been used as such for a period in excess of 9

> years. Such agreement runs with the land and binds Defendants Potters who have both actual and constructive notice of Plaintiff's rights in said property and its rights to use the same for ingress and egress to its 7-Eleven store."

Upon completion of the trial the trial court, in regards to the allegation set forth in Paragraph 4 of the Amended Complaint made the following Findings of Fact (R. p 99):

> "4. Plaintiff's claim of an easement across property purchased by the Defendant is without basis in that the Plaintiff acquired no property rights to cross this property, there is no recorded document conveying any easement or property rights to the Plaintiff to use or cross the Defendants' property and the parties have admitted that there was no written conveyance or recordable instrument conveying any property rights to the contiguous property purchased by the Defendants. Further, no consideration was exchanged for any property interest in the property owned by the Defendants."

It is submitted to this Court that complete, adequate Findings in accordance with the laws of this State have been entered and Appellant is simply grasping at straws in an attempt to find something upon which to base their appeal.

Rucker v. Dalton, Utah, 598 P.2d 1336 (1979), cited by Appellants states at page 1338:

> "To that end the findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached."

In this instance there were two claims: (1) a "way of necessity" and (2) an agreement. The trial court specifically found that neither claim had any merit and the findings establish the basis in a clear and distinct manner.

POINT IV.
Respondents Should Be Entitled To An Award Of Damages For The Continuing Trespass By The Appellants

The evidence is uncontradicted that Appellants and their

customers have been utilizing the Respondents' property continually since its purchase in 1984 (R. p 119). That use was totally unauthorized (R. p 217). The fair rental value of the property being used was between $2,000 and $4,000 per month. Utilizing the lowest figure admitted into evidence would result in the minimum damage of $2,000 x 22 months (June 1984 to April, 1986) of $44,000.

The Respondent's testimony was admissable to support his damages, especially since Appellant put on no evidence contradicting this evidence. **Williams v. Oldroyd**, Utah, 581 P.2d 561 (1978).

Also, since the record is undisputed that Appellant's agent, Mr. Pack, knew from the beginning that they never acquired this property (R. pp 180-181) the flagrant and willful trespass required the award of punitive damages. **Powers v. Taylor**, 14 Utah 2d 152, 379 P.2d 380 (1963)

CONCLUSION

The judgment of the trial court should be affirmed except as to the issue of damages which the Respondents are entitled. The Appellants, a huge company with extensive real estate interests, are trying to grab property which they never owned, for nothing, from an innocent third party. The attempt itself is reprehensible.

This matter should be remanded with instructions to enter judgment for damages in favor of Respondents for at least

$44,000, being the minimum value of the property Appellant has simply elected to use without any claim or permission.

RESPECTFULLY SUBMITTED this 1 day of December, 1986.

Robert Felton

MAILING CERTIFICATE

I certify that I mailed four (4) true and correct copies of the foregoing RESPONDENT'S BRIEF by United States first-class mail, postage prepaid, to Ralph L. Jerman and B.L. Dart 1407 West North Temple, Salt Lake City, Utah and on the 3 day of December, 1986.

ADDENDUM TO TRIAL BRIEF

UTAH STATUTES CITED.....NO. 1

GAIL POTTER TESTIMONY.....NO. 2

JANA FUCA TESTIMONY.....NO. 3

E. L. PACK TESTIMONY.....NO. 4

ROBERT BOWLES TESTIMONY.....NO. 5

MINUTES OF WEST JORDAN CITY COUNCIL.....NO. 6

NO. 1

UTAH STATUTES

Utah Code Annotated § 25-5-3

Utah Code Annotated § 57-3-3

Utah Code Annotated § 57-2-1

Utah Code Annotated § 57-1-6

Utah Code Annotated § 10-9-1

Utah Code Annotated § 10-9-4

fraud or the violation of a duty imposed under a fiduciary or confidential relationship. Hawkins v. Perry (1953) 123 U 16, 253 P 2d 372.

Where defendant altered a certificate of sale of land by inserting his own name as purchaser and the land was not included in the decedent's estate which was distributed in 1924, there was a constructive trust for the benefit of the decedent's heirs and the estate could be reopened. Perry v. McConkie (1953) 1 U 2d 189, 264 P 2d 852.

A deed given to secure a debt, though absolute in form, was in equity a mortgage, so that a trust was created by operation of law and, under the express language of this section, was not prevented by 25-5-1. Taylor v. Turner (1972) 27 U 2d 39, 492 P 2d 1343.

Parol evidence may be introduced to prove a constructive trust or resulting trust since they arise by operation of law and are expressly excluded from the statute of frauds by this section. In re Estate of Hock (1982) 655 P 2d 1111.

Wills.

When will is sought to be maintained also as a contract, it must satisfy this and succeeding sections of the statute of frauds. Ward v. Ward (1938) 96 U 263, 85 P 2d 635.

Collateral References.

Applicability of statute of frauds to contracts to surrender, rescind or abandon trusts, 106 ALR 1313, 173 ALR 281.

Character and validity of instrument as contract as affected by provision for post-mortem payment or performance, 1 ALR 2d 1178.

Decedent's agreement to devise, bequeath, or leave property as compensation for services, 106 ALR 742.

Enforceability, as regards proceeds of sale of property, of real estate trust that does not satisfy statute of frauds, 154 ALR 385.

Grantee's oral promise to grantor as giving rise to trust, 159 ALR 997.

Trust arising by grantee's oral promise to grantor, 35 ALR 280, 45 ALR 851, 80 ALR 195, 129 ALR 689, 159 ALR 997.

DECISIONS UNDER FORMER LAW

Trusts.

Trusts arising by implication or operation of law are expressly excluded from the effects of the statute; and a deed of conveyance, though absolute in form, if given to secure a debt, is in equity treated as a mortgage — a trust by operation of law. Wasatch Min. Co. v. Jennings (1887) 5 U 243, 15 P 65.

25-5-3. Leases and contracts for interest in lands. Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing.

History: R.S. 1898 & C.L. 1907, § 2463; C.L. 1917, § 5813; R.S. 1933 & C. 1943, 33-5-3.

Compiler's Notes.

Analogous former statute, 2 Comp. Laws 1888, § 3918(5).

Agent's authority.

In action for specific performance of contract for sale of real property, held in absence of evidence showing defendant's agent was authorized in writing to sell real property or equities taking case out of statute of frauds, trial court properly granted motion for dismissal of action. Lee v. Polyhrones (1921) 57 U 401, 195 P 201.

If there is no contract there cannot, of course, arise any question as to a requirement that it should be in writing and subscribed by the party or his agent. Skeen v. Van Sickle (1932) 80 U 419, 15 P 2d 344.

Where real estate agents had no express or implied authority under listing agreement to execute contract of sale of real estate on behalf of vendors, latter were not bound by the terms of an earnest money agreement. Frandsen v. Gerstner (1971) 26 U 2d 180, 487 P 2d 697.

There is no requirement that the agent of the lessee or assignee be authorized in writing to execute the lease or assignment. Zeese v. Estate of Siegel (1975) 534 P 2d 85.

Introduction of parol evidence was proper to show that agent who made contract in his own name was acting for corporate principal,

— Mortgages.
The matter of priority between successive mortgages is governed by general principles of mortgage law. This is true as to purchase money mortgages. State v. Johnson, 71 Utah 572, 268 P. 561 (1928).

— Overlapping conveyances.
Where deeds involved in two separate conveyances contained descriptions of land that overlapped, party who first recorded notice of purchase prevailed. Wilson v. Schneiter's Riverside Golf Course, 523 P.2d 1226 (Utah 1974).

Recordation as notice.
One who deals with real property is charged with notice of what is shown by the records of the county recorder of the county in which the real property is situated. Crompton v. Jenson, 78 Utah 55, 1 P.2d 242 (1931).

"Recorded."
There is nothing in this section or § 57-3-3 which specifically defines what is meant by the word "recorded." Boyer v. Pahvant Mercantile & Inv. Co., 76 Utah 1, 287 P. 188 (1930).

COLLATERAL REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d Records and Recording Laws § 98.
C.J.S. — 92 C.J.S. Vendor and Purchaser § 324.
A.L.R. — Recorded real property instrument as charging third party with constructive notice of provisions of extrinsic instrument referred to therein, 89 A.L.R.3d 901.
Key Numbers. — Vendor and Purchaser ⇔ 231(1).

57-3-3. Effect of failure to record.

Every conveyance of real estate hereafter made, which shall not be recorded as provided in this title, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

History: R.S. 1898 & C.L. 1907, § 2001; C.L. 1917, § 4901; R.S. 1933 & C. 1943, 78-3-3.

NOTES TO DECISIONS

ANALYSIS

Effect of failure to record.
Priorities.
— Description of property insufficient.
— Prior unrecorded conveyance.
Words and phrases defined.
— "Conveyance."
— — Mortgage.
— "Recorded."

Effect of failure to record.
Where, after mortgage was executed on certain tract of land, owner executed deed to grantee on property not included in mortgage, which deed was not recorded, decree in action to foreclose mortgage on tract of land, including part conveyed to grantee, was not binding on grantee who was not party to such action. Federal Land Bank v. Pace, 87 Utah 156, 48 P.2d 480, 102 A.L.R. 819 (1935).

A judgment lien is subordinate and inferior to a deed which predated it whether recorded after such judgment or whether not recorded at all. Kartchner v. State Tax Comm'n, 4 Utah 2d 382, 294 P.2d 790 (1956).

Where buyers did not record their own conveyance, or contract, they did not obtain the statutory protection enjoyed by subsequent purchasers in good faith and for value against unrecorded interests. Gregerson v. Jensen, 669 P.2d 396 (Utah 1983).

Priorities.

— Description of property insufficient.
Although defendant's deed was recorded

CHAPTER 2
ACKNOWLEDGMENTS

Section		Section	
57-2-1.	Manner of acknowledging or proving conveyances.	57-2-10.	Proof of execution—How made.
57-2-2.	Who authorized to take acknowledgments.	57-2-11.	Witness must be known or identified.
57-2-3.	Acknowledgment by deputy.	57-2-12.	Certificate of proof by subscribing witness.
57-2-4.	Taking acknowledgments of persons with United States armed forces.	57-2-13.	Form of certificate of proof.
57-2-5.	Certificate of acknowledgment.	57-2-14.	When subscribing witness dead—Proof of handwriting.
57-2-6.	Party must be known or identified.	57-2-15.	What evidence required for certificate of proof.
57-2-7.	Form of certificate of acknowledgment.	57-2-16.	Subpoena to subscribing witness.
57-2-8.	When grantor unknown to officer.	57-2-17.	Disobedience of subpoenaed witness—Contempt—Proof aliunde.
57-2-9.	When executed by attorney in fact.		

57-2-1. Manner of acknowledging or proving conveyances.

Every conveyance in writing whereby any real estate is conveyed or may be affected shall be acknowledged or proved and certified in the manner hereinafter provided.

History: R.S. 1898 & C.L. 1907, § 1984; C.L. 1917, § 4884; R.S. 1933 & C. 1943, 78-2-1.

NOTES TO DECISIONS

Deed

Either the acknowledgment or the proving must accompany every deed to make it valid. Both are not necessary to make it prima facie good, either being sufficient if the deed is otherwise sufficient. Tarpey v. Desert Salt Co., 5 Utah 205, 14 P. 338 (1887), aff'd, 142 U.S. 241, 12 S.Ct. 158, 35 L. Ed. 999 (1891).

COLLATERAL REFERENCES

Am. Jur. 2d. —1 Am. Jur. 2d Acknowledgments § 5.

C.J.S. — 1 C.J.S. Acknowledgments §§ 6, 7.

Key Numbers. — Acknowledgment ⇐ 3, 4.

57-2-2. Who authorized to take acknowledgments.

The proof or acknowledgment of every conveyance whereby any real estate is conveyed or may be affected shall be taken by some one of the following officers:

(1) If acknowledged or proved within this state, by a judge or clerk of a court having a seal, or a notary public, county clerk or county recorder.

(2) If acknowledged or proved without this state and within any state or territory of the United States, by a judge or clerk of any court of the United States, or of any state or territory, having a seal, or by a notary

ing to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of such words as herein provided. In all cases the interest of joint tenants must be equal and undivided.

History: R.S. 1898 & CL 1907, § 1973; C.L. 1917, § 4873; R.S 1933 & C. 1943, 78-1-5; L. 1953, ch. 93, § 1.

Cross-References. — Inheritance tax on jointly held property, § 59-12-5.
Interparty agreements, § 15-3-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Joint tenancies.
—Alienation and execution.
—Judicial sales.
—Severance by conveyance or sale.
Preference for tenancy in common.

Joint tenancies.

—Alienation and execution.

The Supreme Court of the United States has said that it would assume that "Utah accepts the general common-law rules relating to joint tenancies, including the rules permitting alienation of the interest of a joint tenant, and making its property subject to execution and separate sale." Mangus v. Miller, 317 U.S. 178, 63 S. Ct. 182, 87 L. Ed., 169, rehearing denied, 317 U.S. 712, 63 S. Ct. 432, 87 L. Ed. 567 (1943).

—Judicial sales.

Where a joint tenant defaulted on her obligation to a mortgagee, her subsequent purchase of the property at a judicial sale was deemed to be for the benefit of all cotenants. Jolley v. Corry, 671 P.2d 139 (Utah 1983).

—Severance by conveyance or sale.

The rule that a joint tenancy is severed by one tenant's conveyance applies not only to voluntary conveyances, but also to involuntary conveyances pursuant to judicial sales. Jolley v. Corry, 671 P.2d 139 (Utah 1983).

Preference for tenancy in common.

This section expresses the trend away from the English joint tenancy and in favor of tenancy in common. Neill v. Royce, 101 Utah 181, 120 P.2d 327 (1941).

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Cotenancy and Joint Ownership § 27.
C.J.S. — 86 C.J.S. Tenancy in Common § 7.
A.L.R. — Severance or termination of joint tenancy by conveyance of divided interest directly to self, 7 A.L.R.4th 1268.
Key Numbers. — Tenancy in Common ⇐ 3.

57-1-6. Recording necessary to impart notice — Operation and effect — Interest of person not named in instrument.

Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate or whereby any real estate may be affected, to operate as notice to third persons shall be proved or acknowledged and certified in the manner prescribed by this title and recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such proofs, acknowledgment, certification or record, and as to all other persons who have had actual notice. Neither the fact that an instrument, recorded as herein

ovided, recites only a nominal consideration, nor the fact that the grantee in ich instrument is designated as trustee, or that the conveyance otherwise urports to be in trust without naming the beneficiaries or stating the terms the trust, shall operate to charge any third person with notice of the inter- st of any person or persons not named in such instrument or of the grantor or rantors; but the grantee may convey the fee or such lesser interest as was onveyed to him by such instrument free and clear of all claims not disclosed y the instrument or by an instrument recorded as herein provided setting orth the names of the beneficiaries, specifying the interest claimed and de- cribing the property charged with such interest.

History: R.S. 1898 & C.L. 1907, § 1975; C.L. 1917, § 4875; R.S. 1933 & C. 1943, 57-1-6; L. 1945, ch. 106, § 1; 1947, ch. 97, § 1.

Cross-References. — Acknowledgments generally, § 57-2-1 et seq.

Certified copies of record of conveyance, admission in evidence, § 78-25-13.

County recorder, § 17-21-1 et seq.

Fees of recorder, § 21-2-3.

Judgments, record of as imparting notice, § 17-21-11.

Recording generally, § 57-3-1 et seq.

Transmitting documents by telegraph or telephone, § 69-1-2.

NOTES TO DECISIONS

Analysis

Acknowledgments.
Actual notice.
—Assignments.
—Duty to inquire.
—Execution sales.
—Occupancy and possession.
—Trusts.
Delivery of deed.
Effect of failure to record.
Equitable rights.
Livery of seizin.
Mortgages.
Patents.
Priorities.
Recital of consideration.
Recordation as notice.
—In general.
—Forged deed.
"Recorded" construed.

Acknowledgments.

A deed as between the parties and those having notice thereof is good without any acknowledgment, and actual possession constitutes notice. Jordan v. Utah R.R., 47 Utah 519, 156 P. 939 (1916).

A deed need not be acknowledged to be valid between the parties thereto. Mitchell v. Palmer, 121 Utah 245, 240 P.2d 970 (1952).

Acknowledgment taken by mortgagee himself as notary public is void; thus, a mortgage, acknowledged by the mortgagee, though recorded, is ineffective for purpose of notice, since it is not legally recordable. Norton v. Fuller, 68 Utah 524, 251 P. 29 (1926). See § 57-2-1 et seq.

Actual notice.

—Assignments.

Attaching creditors who had actual notice of assignment for benefit of creditors were not in position to object that statutory notice of assignment was not given. Snyder v. Murdock, 20 Utah 407, 59 P. 88 (1899).

—Duty to inquire.

The demands of this section are answered if a party dealing with the land has information of a fact or facts that would put a prudent man upon inquiry and would, if pursued, lead to actual knowledge of the state of the title; this is

Section
10-9-28. Short title — Definitions.
10-9-29. Severability clause — Jurisdiction of commission over public property.
10-9-30. Violation of chapter or ordinance punishable as misdemeanor — Remedies of municipality and owners of real estate.

ARTICLE 1

ZONING POWER OF CITIES AND TOWNS

10-9-1. Power to regulate and restrict height and size of buildings and height and location of trees and other vegetation — Regulations to encourage use of solar and other forms of energy.

For the purpose of promoting health, safety, morals and the general welfare of the community the legislative body of cities and towns is empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the height and location of trees and other vegetation, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Regulations and restrictions of the heights and number of stories of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees or vegetation except for new growth on such vegetation. These regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation and may assure access to sunlight for solar energy devices.

History: L. 1925, ch. 119, § 1; R.S. 1933, 15-8-89; L. 1941, ch. 18, § 1; C. 1943, 15-8-89; L. 1981, ch. 44, § 1.

Amendment Notes. — The 1981 amendment inserted "the height and location of trees and other vegetation" in the first sentence, and added the last two sentences.

Cross-References. — Airport zoning regulations, § 2-4-1 et seq.

Building and fire regulations, § 10-8-52.

Conformity to zoning ordinances of other political subdivisions, § 11-16-1.

County zoning and planning, § 17-27-1 et seq.

Lumberyards and combustible materials, prohibition within fire limits, § 10-8-70.

Municipal Planning Enabling Act and powers of cities and towns thereunder, § 10-9-19 et seq.

Slum clearance, §§ 11-15-1 et seq., 11-19-1 et seq.

State planning coordinator, § 63-28-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Deed restrictions and covenants.
Fraternity and sorority houses.
Gasoline filling and service station.
Initiative power of the people.
Judicial review.
Prior nonconforming use.

10-9-4. Planning commission — Zoning plan, ordinance, maps and recommendations — Certification to legislative body — Zoning of municipality.

In order to more fully avail itself of the powers conferred by this chapter to the mayor, with the advice and consent of the legislative body, may appoint a commission to be known as the planning commission. The planning commission, through its own initiative may, or by order of the legislative body of the municipality shall, make and certify to the legislative body a zoning plan, including both the full text of the zoning ordinance and maps, and representing the planning commission's recommendations for zoning the municipality. The legislative body may, after receiving the recommendations of the planning commission for the zoning of the municipality, divide the municipality into districts or zones of such number, shape, and area as it may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures, and the uses of land.

History: L. 1925, ch. 119, § 4; R.S. 1933 & C. 1943, 15-8-92; L. 1949, ch. 15, § 1; 1983, ch. 33, § 5.

Amendment Notes. — The 1983 amendment substituted "the mayor, with the advice and consent of the legislative body" for "such legislative body".

Cross-References. — Municipal Planning Enabling Act and planning commissions thereunder, § 10-9-19 et seq.

NOTES TO DECISIONS

ANALYSIS

Discretion of city council.
Fraternity and sorority houses.
Spot zoning.

Discretion of city council.

The discretion of the governing body of a city is very extensive with regard to the wisdom of the plan, the necessity for the zoning, the number and the nature of the districts to be created, the boundaries thereof and the uses permitted therein. It is the primary duty of the city to make the classifications. If a classification is reasonably doubtful, the judgment of the court will not be substituted for the judgment of the city. In short, unless the action of the governing body of the city is arbitrary, discriminatory or unreasonable, or clearly offends some provision of the Constitution or another statute, the court must uphold it, if it is within the municipality's grant of power. Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 149 A.L.R. 282 (1943).

By the terms of this section and §§ 10-9-1 to 10-9-3, the governing body of a city is granted discretionary power to district and zone cities for various purposes that are to the public interest; the exercise of that power will not be interfered with by the courts unless the discretion is abused. Phi Kappa Iota Fraternity v. Salt Lake City, 116 Utah 536, 212 P.2d 177 (1949).

Fraternity and sorority houses.

Ordinance confining the location of fraternity or sorority houses, in restricted residential district, to an area not more than 600 feet from the lands and premises occupied by institution to which the fraternity or sorority is incident was valid as against contention that it was a discrimination against the rightful use of the plaintiffs' premises. Phi Kappa Iota Fraternity v. Salt Lake City, 116 Utah 536, 212 P.2d 177 (1949).

Spot zoning.

Zoning ordinances, to the extent that they provided for small spot Residential "C" or Residential "B3" districts, did not violate requirement of comprehensive zoning plan. Provisions creating very small areas for limited business purposes detached from "C" or "B3" districts were not objectionable as "spot zoning," or as offending against the rule that zoning must be by districts. Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 149 A.L.R. 282 (1943).

NO. 2

GAIL POTTER TESTIMONY

R. pp 214-217

GAIL C. POTTER

called as a witness, at the instance of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FELTON:

Q State your name and address.

A Gail C. Potter. I have two addresses. Do you want the one in L.A. or here?

Q Your residence.

A 4844 Brewster Drive, Tarzana, California.

Q Okay, and, Mr. Potter, when you purchased this property, I take it you saw a 7-Eleven store?

A Yes.

Q Did you make any inquiry as to what property 7-Eleven owned and what property you were buying?

A Yes.

Q And would you tell me, please, what inquiry you made?

A Two. First of all, we asked the title company to search the property very carefully to be sure there was nothing of record against the property as far as easements of ingress and egress or any type of easement. We, secondly, asked the real estate broker what we were dealing with if she had any knowledge or knew of any rights that 7-Eleven

had other than the 6200 South entrance on their property.

Q As a result of this inquiry, did you learn of any rights that 7-Eleven asserted?

A None.

Q Mr. Potter, is this corner--what were you going to do with this property, your property?

A Develop a shopping center on 5.9200 acres.

Q Is that shopping center under construction?

A Yes.

Q A portion of it?

A Yes.

Q Does this property which is the subject of this suit affect your plans for the property--is it important to the project?

A Very definitely.

MR. DART: I will object on the basis of relevancy of what the plans of this buyer is going to be as to that property.

THE COURT: Probably isn't important.

Q (By Mr. Felton) Mr. Potter, do you know of the approximate dimension of this parcel of property that 7-Eleven is using?

A Approximately 87 and some fraction times a hundred and twenty-nine foot depth off of 62nd South.

Q Do you have the value as to the rental value?

A Rental value?

Q Yes.

MR. DART: Object on the basis of lack of foundation.

MR. FELTON: Utah law provides that an owner may testify.

THE COURT: You may answer.

A (By the Witness) Yes.

Q (By Mr. Felton) What is that opinion?

A There would be two methods commonly used to determine value, one, taking the total square footage of the parcel under question as to the total purchase price of the overall parcel.

THE COURT: Let me interrupt you. The answer is not responsive. We are talking about the rental value of this specific parcel of land.

MR. FELTON: That's what he is talking about. He's just explaining how he is arriving at it.

THE COURT: Give us a figure.

A (By the Witness) Your Honor, the high value of that property would be $4,000 a month. The low figure would be around 20 to 2500.

MR. DART: I will object and ask that the answer be stricken without sufficient foundation and basis at this point.

THE COURT: If he owns the property, I think he is permitted to testify. The fact that he owns it would be sufficient foundation. I have never understood the rule but I think that is what it is.

Q (By Mr. Felton) Has 7-Eleven been utilizing that property since you purchased it in June of '84?

A Yes.

Q And have you on occasion seen the property?

A Yes.

Q Okay, you have seen what kind--what kind of use is going on?

A A combination of used car lot sales.

Q What do you mean?

A Well, there have consistently been parked the time I have seen it numerous cars parked on the strip with for sale signs on them and as of yesterday when I came by there were either five or six parked on there with for sale signs on it, so they have been using it.

Q Are there any parking stalls on the property?

A There's been some chalk--some lines painted for parking, yes.

Q At any time has 7-Eleven or Southland Corporation or any other person had your permission to utilize that property?

A No.

NO. 3

JANA FUCA TESTIMONY

R. p 115

THE COURT: Sometimes it does.

MR. FELTON: I will submit it.

THE COURT: Depends on who is asking the question. I will hear it.

Q (By Mr. Felton) What did she tell you?

A We had a couple conversations prior to the closing that related to the 7-Eleven issue and one conversation was she had contacted somebody from the 7-Eleven Corporation, Southland Corporation and they were going to see if they did have any records or anything that would pertain to any rights that they may have over that property, and in getting back to her, in a subsequent conversation, she said that they could not find any record of any entitlement of that property to them.

Q As a result, I take it your father bought the property?

A Yes.

Q You closed it for him?

A I closed it with Bob Bowles. I was the power of attorney.

Q You had power of attorney?

A Yes.

Q For your father?

A Yes.

MR. FELTON: No further questions.

NO. 4

E.L. PACK TESTIMONY

R. pp 180-181

intends to do with the property seven years after the purchase by Southland Corporation. We have a drawing that was done after the fact by Mr. Gini that shows the location of the Southland store, the size of the lot and in conjunction, I don't have any objection to that, anything that brings into play as this exhibit does with all the architects' or planners' renditions on it. It is inappropriate. I would ask that that--

MR. FELTON: At this point, Your Honor, we would only ask to allow Mr. Pack to refer to it for purposes of showing where the property is. We would not request its introduction.

THE COURT: I will permit its use for that purpose.

Q (By Mr. Felton) You then sometime later bought another 20 feet from them; is that right?

A Yes.

Q It is on this side of the property?

A On the south side.

Q That's here? (Indicating)

A Yes.

Q And the property in dispute sits where I am pointing, does it not?

A Yes.

Q Did you ever pay them any additional sums for any of this property?

A At no time was that ever offered to us for sale or purchase.

MR. FELTON: I have no further questions.

REDIRECT EXAMINATION

BY MR. DART:

Q The additional 20 feet was purchased for another purchase, was it not?

A Yes, it was.

Q And it is in fact unrelated to the transactions as it relates to access on the Dixie Drive?

A Having to turn our building to face Dixie Drive and to meet the setback requirements by the City of West Jordan, we had to acquire the other 20 feet.

Q I have that contract and deed if it is of any interest.

MR. FELTON: We stipulate that occurred, Your Honor.

Q (By Mr. Dart) Now, with respect to the questioning by Mr. Felton that the price didn't change, in fact, though, there was a change, was there not, in that under Exhibit 1, plan B, there would have been initially if you had built out to the north two curbcuts. It would have been two curbcuts from 7-Eleven store coming onto 6200 South?

A Would have been two 35-foot curbcuts.

Q By changing the property around, you were limited

NO. 5

ROBERT BOWLES TESTIMONY

R. pp 206-207

then when objections were made about 6200 South being the access, that you were told to get back with 7-Eleven concerning that problem?

A That's what that paragraph says. It says for us to go back to get our homework done before we presented it again.

Q And the homework related to the building permit on 7-Eleven store, did it not?

A Yes.

MR. DART: Thank you, that's all I have.

CROSS-EXAMINATION

BY MR. FELTON:

Q Mr. Bowles, what was Big Six going to do with this piece of property that's in dispute, the corner?

A We had talked in our board meetings of putting a convenience type outlet in there with a gasoline pump because of the distance to the nearest service station. We realized that the property wasn't big enough to do much with but we did feel that we had enough room to put a couple self-service pumps in there with an attendant.

Q Did 7-Eleven ever offer to buy that corner?

A To me, no. I never did deal with them on the sale.

Q But Big Six was going to use the corner?

A Yes.

Q To your knowledge did they ever pay or did you ever convey an easement to them across that property?

A No.

Q When you are talking about accesses in the scheme of things, are you--you are not necessarily talking about this access right in front of their store to the shopping center?

A When you are developing shopping centers you draw in there only the final approved plans exactly where the approaches are. But in the schematic drawings you just pencil in where you feel they ought to be.

Q Was it ever your intention to give 7-Eleven an access right in front of their store--

MR. DART: Objection to what their intention may be.

THE WITNESS: No.

MR. DART: I ask that the answer be stricken. I object to what his intention is--

THE COURT: The objection is overruled. The answer is in.

MR. FELTON: No further questions.

REDIRECT EXAMINATION

BY MR. DART:

Q Mr. Bowles, when you talked in your board meetings about the possibility of putting a gas station on that

NO. 6

MINUTES OF WEST JORDAN CITY COUNCIL
DECEMBER 9, 1975

MINUTES OF THE REGULARLY SCHEDULED MEETING OF THE
CITY COUNCIL HELD AT THE CITY OFFICES ON DECEMBER 9, 1975

The meeting commenced at 8.05 p.m

Members present: Mayor Junius H. Burton, Lawrence Hunt, Grandale Finlayson John Price and Glen Moosman

Others present: Glenden H. Leak, A. Mecham Paul H. Gini, Vicky Miller, Sally Wood, Jack A. Blank, C. Brian Morrison Robert I. Bowles. Nick Colessides and Murial Andersen

The opening prayer was offered by Glen Moosman.

The minutes of the meeting of November 25, 1975, were reviewed by the Council and approved as recorded.

Jack Blank requested permission to have an office in his home at 7174 South 2180 West for C & B Cleaning Co. This will be an office location only and there will be no machinery or equipment kept at the home. Mr. Hunt stated that Planning and Zoning had recommended that this Conditional Use Permit be granted. Mr. Hunt said that if the Council approves this it will be on the condition that if any valid complaints are received the business will have to be discontinued. Mr. Hunt moved that the Conditional Use Permit be granted on the above mentioned condition. Mr. Price seconded the motion and it carried unanimously

Mayor Burton read a notice of public hearing to rezone property located at 6200 South 3655 West from R10 to CN for the purpose of developing a shopping center. The public hearing was opened for discussion. Mr. Gini showed on a map where the shopping center would be located in conjunction with the Dixie Valley Subdivision. He said that they planned to have a mini-mall type development with grocery, laundromat, drug store professional offices, etc. Mr. Hunt said that Planning and Zonin had recommended that this zone change be granted but that there should be no entrance to the shopping center from 6200 South. Mr. Gini said that their plans had been changed to move this entrance. He also stated that final development plans would begi immediately if the zoning is granted. Bob Bowles said that the shopping center would be developed professionally and would not be just gobbed up. Mr. Hunt mentioned that all construction plans would have to be approved by the Planning and Zoning Commission. All notices of the public hearing were determined to be in order. Mr. Finlayson moved that the Council rezone the following describe property from R10 to CN on the recommendation of Planning and Zoning. Mr. Price seconded the motion and it carried unanimously

Property zoned CN
Beginning at a point which is S0°00'55" E 33.00 ft. from the North Quarter Corner of Section 20. T2S R1W, SLB & M. and running thence S0°00'55" E 840.28 ft. to the North line of Dixie Valley No. 9; thence S89°59'05" W331.1 ft; thence N0°01'50" W 840.28 ft. thence East along the South line of 6200 South Street to the point of beginning Contains 6.39 acres.